

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARVIN ERWIN, 12219-078,

Petitioner,

v.

**DAVID BERKEBILE, Warden,
FCI-Seagoville,**

Respondent.

§
§
§
§
§
§
§
§
§

Civil Action No. **3:08-CV-0651-L**

ORDER

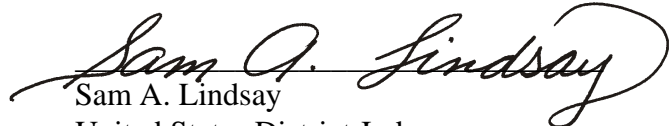
Before the court are the Findings, Conclusions and Recommendation of the United States Magistrate Judge, filed September 17, 2008. No objections were filed.

This is a habeas petition brought pursuant to 28 U.S.C. § 2241. The magistrate judge determined that the petition should be dismissed in part and denied in part. Specifically, the claims seeking to invalidate 28 C.F.R. §§ 570.20 and 570.21 and PS 7310.04 should be dismissed as moot because they are moot after the passage of the Second Chance Act of 2007, Pub. L. 110-199, Title II, § 251(a), 122 Stat. 692 (Apr. 9, 2008). Because home confinement does not implicate 18 U.S.C. § 3621(d), Petitioner's claim seeking to invalidate PS 7320.01 should be denied. His claim that BOP has established a de facto policy also does not implicate section 3621(d) and should also be denied. His equal protection claim should be denied because he has not alleged that he has been denied placement in a halfway house or on home confinement due to purposeful discrimination or any impermissible motive. Petitioner is therefore not entitled to habeas relief.

Having reviewed the pleadings, file and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The

magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court **dismisses in part** and **denies in part** Petitioner's habeas petition.

It is so ordered this 23rd day of October, 2008.


Sam A. Lindsay
United States District Judge